...reme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1997

NO. 97-1278

INMATES OF THE SUFFOLK COUNTY JAIL, et al.,
Petitioners,

vs.

RICHARD J. ROUSE, SHERIFF OF SUFFOLK COUNTY, et al.
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
For the First Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Questions Presented

1. Whether this Court should decline to review the issues in this case as there appears to be no disagreement among the circuits.
2. Whether Section 3626(b)(2) of the Prison Litigation Reform Act presents any constitutional difficulties under separation of powers or due process principles.

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COUNTERSTATEMENT OF THE CASE

The Consent Decree at the center of the present dispute has had a long and contentious history. Entered into by the parties to this action in 1979, the Consent Decree remained in effect until terminated by Order of the First Circuit Court of Appeals on November 7, 1997, pursuant to the Prison Litigation Reform Act of 1996 (the "PLRA"). The decree remained in effect despite numerous changes in conditions including, most notably, the construction of a new, state-of-the-art Suffolk County Jail. The long history of this case illustrates the condition which Congress sought to remedy by enacting the PLRA.

This action was initiated in the United States District Court for the District of Massachusetts in 1971, on behalf of the inmates of the Suffolk County Jail. At that time, the Suffolk County Jail was located on Charles Street in the City of Boston and was known as the "Charles Street Jail." By 1971, the Charles Street Jail was an out-of-date, unfit facility. On June 20, 1973, the District Court determined that the then existing conditions at the Charles Street Jail were unconstitutional and permanently enjoined the Sheriff from, inter alia, "housing at the Charles Street Jail after November

30, 1973, in a cell with another inmate, any inmate who is awaiting trial." Inmates of Suffolk County Jail v. Eisenstadt, 360 F. Supp. 676 (D. Mass. 1973).

The Consent Decree

In 1979, in order to comply with the Court's June 20, 1973 Order, the parties entered into a consent decree (the "Consent Decree") providing for the construction of a new high-rise jail adjacent to the Charles Street Jail.

The parties to the Consent Decree explicitly recognized the prospect of changing conditions and the continuing need to adapt to conform to current circumstances. The site for the jail was moved from Charles Street to Nashua Street and changed from a high-rise to a modern and spacious seven-story structure. The Nashua Street Jail was completed in May, 1990, at a cost of $54 million. It is one of the most modern penal facilities in the country, providing more amenities to inmates than most other state and county facilities. The Nashua Street Jail includes a variety of functionally distinct spaces to meet the special needs of inmates. There are 453 cells and each cell is approximately 70 square feet with 40 square feet of available floor space. This amount of floor space exceeds the

American Correctional Association's standard of 35 square feet. Each housing unit contains two tiers of sixteen to nineteen cells, a large "day room" where meals are served and detainees may spend their out-of-cell time, a separate "quiet" or "multi-purpose" room, counseling, noncontact visiting and attorney-client rooms, a washer and dryer for personal laundry, a kitchenette for serving meals prepared in the central kitchen, two televisions, exercise equipment, telephones for use by detainees and access to an outdoor recreation deck shared with the adjoining housing unit on the same floor.

The Nashua Street Jail also offers a contact visiting area, chapel, general library, classroom space for use by inmates, access to legal materials and a large central gymnasium complete with exercise equipment. Because of the modern, expanded facilities of the new Nashua Street Jail, visiting hours are permitted seven days a week, including holidays. All areas of the jail are climate-controlled.

From the very first day the new Nashua Street Jail was opened, in order to comply with the single bunking provision of the Consent Decree respecting the old Charles Street Jail, the

Sheriff was required to hold Suffolk County pretrial detainees in correctional facilities outside of Suffolk County. Every night, dozens of inmates were transferred to other facilities where they were double-bunked in conditions vastly inferior to those at the new Nashua Street Jail. In fact, these other facilities often exceeded their design capacity by as much as 200%.

A result of this federal court intervention, older and already overcrowded facilities in seven other counties were required to house a disproportionately higher number of inmates than the new Nashua Street Jail. Moreover, the Sheriff was forced to divert scarce financial and human resources to the transportation of detainees to facilities outside of Suffolk County each night.

On August 9, 1993, the Sheriff filed a Supplemental Memorandum in which he proposed double bunking in 161 cells in the new facility. Without subsidiary findings, the District Court found that the Sheriff's proposal was not "an appropriately tailored modification," but found, also without explanation, that a modification permitting double-bunking in 100 cells would not impair the integrity of the Consent Decree. In so doing, the District Court acknowledged that "[a] federal court . . . should be loathe to

become entangled in the intricacies of administrative and institutional decisions." Inmates of Suffolk County Jail v. Rufo, 844 F. Supp. 31, 37 (D. Mass. 1994).

On June 14, 1994, the District Court entered a Final Order which allowed a modification of the Consent Decree to permit 100 cells to be double-bunked. The Court explicitly found that such a modification "would be adequately tailored to fit the changed circumstances without reducing the consent decree to or below the constitutional floor." The Court did not identify the "constitutional floor" or explain the logic of any limitation of the number of double-bunked cells in the new facility.

The Nashua Street Jail has received certification from the Massachusetts State Building Code Appeals Board to hold 653 inmates. However, as a result of the June 14, 1994 District Court's Order, the Jail's capacity was reduced to 553 inmates.

The Prison Litigation Reform Act

On April 26, 1996, President Clinton signed into law the Prison Litigation Reform Act (the "PLRA"). The PLRA is intended to "provid[e] reasonable limits on the remedies available

in" lawsuits concerning prison conditions. See H.R. Rep. No. 21, 104th Cong., 1st Sess. 7 (1995).

Section 802 of the Act establishes standards for the entry and termination of prospective relief in civil actions concerning conditions in prisons, jails, and juvenile detention facilities. With regard to the entry of prospective relief, Section 3626(a)(1)(A) provides:

> Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or petitioners. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

Section 3626(b)(2) provides for the immediate termination of any prospective relief that was entered without the findings required by Section 3626(a)(1):

> In any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no

> further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

A court may decline to terminate prospective relief only if it has found that "prospective relief remains necessary to correct a current or ongoing violation of the Federal right." 18 U.S.C. § 3626(b)(3). No such finding has ever been made in this case.

The Proceedings Below

Pursuant to Section 3626(b)(2) of the PLRA, the Sheriff moved the District Court to terminate all prospective relief on the ground that the District Court had theretofore never made the required findings to sustain such relief with regard to the new Nashua Street Jail. In ruling on the Sheriff's motion, the Court acknowledged that it had "not made and does not now make the findings required under § 3626(a)(1) or (b)(2) to keep in force prospective relief, as petitioners have urged."

The District Court terminated the prospective relief imposed by the Consent Decree insofar as it may be characterized as a Court Order. Because the Court purported to preserve elements of the Consent Decree, at least for "contract" purposes, the Court determined that it did not have to address the constitutionality of

the PLRA's termination provision. All parties appealed the decision.

The First Circuit modified the judgment to require that the decree itself, and not simply the prospective relief imposed by the decree, be terminated. The Court held that the PLRA was constitutional in all respects and remanded the case to the District Court for entry of the modified judgment.

REASONS FOR DENYING THE WRIT

I. The Decision Of The First Circuit Court Of Appeals Is Not In Conflict With Decisions In Other Circuits.

The Petitioners acknowledge that the constitutionality of the PLRA has been upheld by no fewer than six separate Circuit Courts.[1] It can hardly be said, therefore, that the First Circuit's decision below creates a "real and embarrassing conflict of opinion and authority between the circuit courts of appeal" justifying review on certiorari. NLRB Pittsburgh S.S. Co., 340 U.S. 498, 502

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[1] See Hadix v. Johnson, Nos. 96-2463, 96-2582, 1998 U.S. App. Lexis 387 (6th Cir. 1998); Dougan v. Singletary, 129 F.3d 1424 (11th Cir. 1997); Benjamin v. Jacobson, 124 F.3d 162 (2d Cir. 1997), reh'g en banc granted, 124 F.3d 162 (2d Cir. 1997); Gavin v. Branstad, 122 F.3d 1081 (8th Cir. 1997); Plyler v. Moore, 100 F.3d 365 (4th Cir. 1996) cert. denied, ___ U.S. ___, 117 S.Ct.2460 (1997).

(1951)(quoting Layne & Bowler Corp. v. Western Well Works, 261 U.S. 387, 393 (1923)).[2]

The issues of federal law involved in this case have been settled by historic decisions of this Court confirmed by more recent precedent. See, e.g. Pennsylvania v. Wheeling & Belmont Bridge Co., 59 U.S. (18 How.) 421 (1856); Plaut v. Spendthrift Farms, 115 S.Ct. 1147 (1995). The First Circuit's decision in this case simply applies the law as expressed in those cases.

II. The PLRA Presents No Constitutional Difficulties under Separation of Powers or Due Process Principles.

A. The PLRA's Provisions for Termination Do Not Violate the Principle of Separation of Powers.

The separation of powers doctrine prohibits Congress from itself assuming the role assigned by the Constitution to the Judicial Branch. Congress may not decide cases. United States v. Klein, 80 U.S. (13 Wall.) 128 (1871). It is the role of Congress, however, to create and structure the inferior courts, and to establish the confines of the jurisdiction of those courts. See U.S. Const. art. I, §

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[2] The Second Circuit has found the PLRA to be constitutional but originally concluded that the residual of any consent decree may be enforced in state court. Benjamin v. Jacobson, 124 F.3d 162,180 (2d Cir. 1997). The Circuit Court has recently ordered en banc reconsideration of the matter.

8, cl. 9; art. III, §§ 1-2; see also Lauf v. E.G. Shinner & Co., 303 U.S. 323, 330 (1938) ("[t]here can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts of the United States"). Congress not only establishes the substantive federal law to be applied by the courts, it has the constitutional authority to establish the procedural and evidentiary rules which apply in proceedings before the federal courts. "[T]he constitutional provision for a federal court system (augmented by the Necessary and Proper Clause) carries with it congressional power to make rules governing the practice and pleading in those courts." Hanna v. Plumer, 380 U.S. 460, 472 (1965).

1. A Consent Decree is Not a Final Judgment.

The petitioners argue that the First Circuit erred in not holding that Section 3626(b)(2) of the PLRA is unconstitutional because it mandates the reopening of a "final judgment" by requiring district courts to terminate consent decrees that were approved before the passage of the PLRA. In support, the petitioners rely on Plaut v. Spendthrift, 115 S. Ct. 1447 (1995).

In Plaut, this Court considered legislation that retroactively allowed petitioners in certain specific securities fraud suits to

revive actions that had been previously dismissed as a result of a statute of limitations rule first announced and applied by the Supreme Court in Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson, 501 U.S. 350 (1991). The Court in Plaut held that this legislation represented an attempt by Congress to "set aside the final judgment of an Article III court by retroactive legislation," 115 S. Ct. at 1458, and thus violated separation of powers principles. The Court explained that "[j]udgments within the powers vested in courts by the Judiciary Article of the Constitution may not lawfully be revised, overturned or refused faith and credit by another Department of Government." Id. at 1456, quoting Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp., 333 U.S. 103, 113 (1948).

Sections 3626(b)(2) and (b)(3) of the PLRA do not violate the principle announced in Plaut. Plaut involved lawsuits for monetary damages. In that context, the Court stated that "[h]aving achieved finality, . . . a judicial decision becomes the last word of the judicial department with regard to a particular case or controversy, and Congress may not declare by retroactive legislation that the law applicable to that very case was something

other than what the courts said it was." Plaut, 115 S. Ct. at 1457. Indeed, the Court in Plaut explained that its ruling was distinguishable from decisions approving statutes "that altered the prospective effect of injunctions entered by Article III courts."[3] Id. at 1459 (citing Pennsylvania v. Wheeling & Belmont Bridge Co., 59 U.S. (18 How.) 421 (1855)).

The basis for this distinction rests in the longstanding principles applicable to injunctive relief. Injunctions, in contrast to monetary judgments, have always been susceptible to modification as a result of changes in law or fact. Pennsylvania v. Wheeling & Belmont Bridge Co., 59 U.S. (18 How.) 421 (1855); Rufo v. Inmates of the Suffolk County Jail, 502 U.S. 367, 384 (1992). In Wheeling & Belmont, this Court explained the dichotomy between the finality of judgments for monetary damages and judgments providing prospective relief. The Court explained:

> [I]f the remedy in this case had been an action at law, and a judgment rendered in favor of the plaintiff for damages, the right to these would have passed beyond the reach of the power of congress . . . . But that part of

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[3]The Court noted that "[a]part from the statute we review today, we know of no instance in which Congress has attempted to set aside the final judgment of an Article III court by retroactive legislation." Plaut v. Spendthrift Farm, Inc., 115 S. Ct. at 1458.

> the decree, directing the abatement of the obstruction, is executory, a continuing decree, which requires not only the removal of the bridge, but enjoins the defendants against any reconstruction or continuance. . . . If . . . this right has been modified by the competent authority, so that the bridge is no longer an unlawful obstruction, it is quite plain that the decree of the court cannot be enforced.

Pennsylvania v. Wheeling & Belmont Bridge Co., 59 U.S. (18 How.) 421,431-432. See also United States v. Swift & Co., 286 U.S. 106 (1932); System Federation No. 91, Railway Employees' Department, AFL-CIO v. Wright, 364 U.S. 642 (1961) (Court held that statutory amendment permitting union shop agreements required modification of a prior consent decree); Plaut, 115 S.Ct. at 1459 (legislation may affect "the prospective effects of injunctions entered by Article III courts"); Rufo v. Inmates of the Suffolk County Jail, 502 U.S. 367, 393 (1992) (holding consent decree may be modified based on significant changes in facts or law); Class v. Norton, 507 F.2d 1058, 1061 (2d Cir. 1974) (holding that Wheeling created a "doctrine of judicial deference to legislative revision of a statute upon which a prospective court order is based"); Daylo v. Administrator of Veterans' Affairs, 501 F.2d 811, 817 (D.C. Cir. 1974) (judgment's prospective effects are not final for separation of power purposes).

Indeed, the several courts addressing this issue have similarly held that the PLRA does not offend separation of powers principles. Plyler v. Moore, 100 F.3d 365 (4th Cir. 1996); James v. Lash, 965 F. Supp. 1190, (N.D. Ind., May 15, 1997); Jensen v. County of Lake, 958 F. Supp. 397 (N.D. Ind. 1997); Benjamin v. Jacobson, 935 F. Supp. 332 (S.D.N.Y. 1996).

2. The PLRA's Requirement that the Court Issue Findings Does Not Deprive the Courts of their Inherent Power and Duty to Enforce Effective Remedies in Constitutional Cases.

The petitioners contend that the PLRA violates the separation of powers doctrine by depriving the federal courts of their essential powers to enter equitable relief to remedy constitutional violations in a prison setting. The PLRA does no such thing. The PLRA merely requires that any prospective relief be accompanied by particularized findings that such relief is necessary to remedy an existing violation of a federal constitutional right, thus ensuring that continuing orders comport with current remedial standards as articulated by the courts. Milliken v. Bradley, 433 U.S. 267, 280 (1977) (The "remedy must therefore be related to 'the condition alleged to offend the constitution.'"); Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 16 (1971)

("[T]he nature of the violation determines the scope of the remedy"); see also McLendon v. Continental Can Co., 908 F.2d 1171, 1182 (3d Cir. 1990) ("In granting injunctive relief, the court's remedy should be no broader than necessary to provide full relief to the aggrieved plaintiff"); Ruiz v. Estelle, 679 F.2d 1115, 1145 (5th Cir. 1982) ("Reparative injunctive relief must be targeted at elimination of the unconstitutional conditions . . . Therefore, a court can order only relief sufficient to correct the violation found"), vac'd in part on other grounds, 688 F.2d 266 (1982), cert. denied., 460 U.S. 1042 (1983); Toussaint v. McCarthy, 801 F.2d 1080, 1087 (9th Cir. 1986) ("our goal is to cure only constitutional violations"), cert. denied, 481 U.S. 1069 (1987).

This Court has held that in a prison setting the remedy must be tailored to specific constitutional violations. See Lewis v. [Casey, 116 S. Ct. 2174, 2183 (1996) ("[t]he remedy [imposed] must of course be limited to the inadequacy that produced the injury-in-fact that the plaintiff has established."). Id.

The PLRA codifies the standards governing the imposition of injunctive relief by requiring express findings in accordance with

those standards.[4] The PLRA in no way prevents an inmate from asserting a constitutional violation. Nor does it deprive a court from hearing such a claim or affording an appropriate remedy for any proven violation. In fact, the PLRA expressly requires that prospective relief be continued if it "remains necessary to correct a current or ongoing violation of the Federal right . . . " and is narrowly drawn to remedy that violation. 18 U.S.C. § 3626(b)(3).[5]

3. The Termination of Relief Provision Does Not Prescribe a Rule of Decision.

Finally, the petitioners contend that the PLRA impermissibly prescribes unreasonable outcome-determinative requirements for prison cases without changing the underlying law, relying on United States v. Klein, 80 U.S. 128, 146 (1871) for support.

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[4]The imposition of such a procedural mechanism is clearly within Congress's power to designate alternative mechanisms for the remediation of constitutional violations. Cf. Seminole Tribe of Florida v. Florida, 116 S.Ct. 1114, 1132-1134 (1996) (Ex parte Young nonstatutory review precluded where Congress established a statutory scheme for review under the Indian Gaming Regulatory Act).

[5] The statute was recently amended to read "current and ongoing violation." Department of Justice Appropriations Act, 1998, Pub. L. No. 105-119, §123 (a)(2), 111 Stat. 2440, 2470 (1997).

"Klein has been interpreted to hold that Congress may not prescribe a rule of decision for the courts to follow without any independent exercise of their judicial powers." Benjamin v. Jacobson, 935 F. Supp. 332, 349 (S.D.N.Y. 1996). Rather, "[t]o affect the outcome of a pending case, Congress must amend the applicable law." Id.; Plaut, 115 S.Ct. at 1452 (citation omitted) ("Whatever the precise scope of Klein, . . . later decisions have made clear that its prohibition does not take hold when Congress amend[s] applicable law"); see also Robertson v. Seattle Audubon Soc'y, 503 U.S. 429, 441 (1992) (declining to decide whether an act of Congress was unconstitutional under Klein because the act amended applicable law).

Here, contrary to petitioners' contention, Congress has merely articulated new remedial standards; it has not imposed an arbitrary outcome or "rule of decision" for the application of pre-existing law. As the Fourth Circuit explained, "Congress . . . has unquestionably amended the law applicable to this case." Plyler v. Moore, 100 F.3d 365, 372 (4th Cir. 1996). Since the PLRA "compel[s] changes in law, not findings or results under old law,"

Seattle Audubon, 503 U.S. at 438, it does not violate the separation-of-powers principles established in Klein.

B. The Application of the PLRA's Termination of Relief Provision Does Not Implicate the Due Process Clause By Impairing Any Existing Contract.

The petitioners contend that the PLRA's termination provision would unconstitutionally impair their "contract" with the defendants. No such contract exists. The Court's inherent power to modify or alter a consent decree makes a consent decree fundamentally different from a private contract.

Even if the Consent Decree could be equated with a private contract, the petitioners argument would still fail. A claim that federal legislation impairs existing contracts falls under the due process clause of the Fifth Amendment. Pension Benefit Guaranty Corp. v. R. A. Gray Co., 467 U.S. 717, 733 (1984). "The Fifth Amendment is not a complete bar to legislation that may impair private contracts." James v. Lash, 965 F. Supp.1190 (N.D. Ind., May 15, 1997). The challenging party must demonstrate, "first, that the statute alters contractual rights," and if so, that the impairment is of "constitutional dimension."

National R.R. Passenger Corp. v. Atchison, Topeka & Santa Fe R.R. Co., 470 U.S. 451, 472 (1985). The challenging party must then "overcome a presumption of constitutionality and 'establish that the legislature has acted in an arbitrary and irrational way.'" Id., quoting Pension Benefit Guaranty Corp., 467 U.S. at 729. However, "where a private contract is impaired by a federal statute, judicial scrutiny is 'quite minimal.'" James v. Lash, 965 F. Supp. 1190 (N.D. Ind., May 15, 1997), quoting National R.R. Passenger Corp., 470 U.S. at 472.

The Sheriff is required to provide constitutional conditions at the Nashua Street Jail. This obligation is independent of any Consent Decree. Accordingly, because the petitioners always possess the right to seek a remedy for any unconstitutional condition, any alleged contractual impairment of their rights under the Consent Decree could never rise to the level "of constitutional dimension." National R.R. Passenger Corp. v. Atchison, Topeka & Santa Fe R.R. Co., 470 U.S. 451, 472 (1985); see also James v. Lash, 965 F. Supp.1190 (N.D. Ind., 1997).

Conclusion

For the reasons stated herein, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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